

ENTERED

October 22, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ENRIQUE VALENZUELA, JR., *et al.*,

Plaintiffs,

VS.

THE BANK OF NEW YORK MELLON,

Defendant.

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CIVIL ACTION NO. 1:18-CV-36

ORDER

Plaintiffs Enrique Valenzuela, Jr. and Marisela Valenzuela filed this action in a Texas state court against The Bank of New York Mellon bringing claims related to a mortgage note on property that Plaintiffs own. (Orig. Petition, Doc. 1-1, 9-17) When Plaintiffs had difficulty making all required payments on the note, they sought a loan modification. The Bank's consideration of the loan modification took years, during which time interest and penalties accrued. After a history of multiple legal processes, Plaintiffs filed this lawsuit, alleging causes of action for promissory estoppel, breach of contract and fraud, and seeking a declaratory judgment. (*Id.*) The Bank removed the matter to this Court (Notice of Removal, Doc. 1), and then filed its Motion for Summary Judgment. (Motion, Doc. 16)

The Magistrate Judge issued a Report and Recommendation (Doc. 26) recommending that the Court grant the Bank's Motion as to the claims for promissory estoppel, breach of contract and fraud, and dismiss the request for a Declaratory Judgment as moot. In the briefing related to the Motion, Plaintiffs argued they had also alleged a cause of action for negligence. The Magistrate Judge determined that Plaintiffs had not pled such a cause of action and, in any event, that summary judgment should be granted as to such a claim.

Plaintiffs timely filed objections to the Report and Recommendation. (Pl.'s Objs., Doc. 27) These objections largely duplicate the arguments presented to the Magistrate Judge, and which are addressed in the Report and Recommendation.

After reviewing the record and the applicable law, and considering the matter *de novo*, the Court agrees that the Bank's Motion for Summary Judgment (Doc. 16) should be granted as to the claims of promissory estoppel, breach of contract and fraud. The Court also concludes that Plaintiffs did not plead a cause of action for negligence, and that even if they had, summary judgment should be granted as to such a claim. Likewise, the Court agrees that the declaratory judgment claim should be dismissed without prejudice for lack of jurisdiction, because the claim is now moot.

In their objections to the Report and Recommendation, Plaintiffs summarily note that the Magistrate Judge did "not address the body of law related to the doctrine of equitable estoppel". (Pl.'s Objs., Doc. 27, 11) To the extent that Plaintiffs contend that they alleged a cause of action for equitable estoppel, the Court concludes that their Original Petition contains no such claim. In addition, even if they had, the analysis in the Report and Recommendation on the claims for fraud and promissory estoppel would also lead to summary judgment as to any cause of action for equitable estoppel.

Finally, following the issuance of the Report and Recommendation, Plaintiffs filed a Motion to Obtain Release of Deed of Trust Lien on Real Property at Fair Market Value (Doc. 28). In this request, Plaintiffs ask the Court to order the release of the Deed of Trust Lien on the property at issue because they have an opportunity to secure third party financing, and "further litigation of this case could be avoided if Plaintiffs were allowed to pay the 'fair market value' of the [property] to obtain the release of the Deed of Trust, which would be accompanied by a mutual dismissal of this lawsuit." (Motion to Release Deed of Trust, Doc. 28) Plaintiffs cite no authority for the requested relief and, effectively, ask this Court to impose a settlement on terms that they propose. The Court declines to do so.

Accordingly, the Court **ADOPTS** the Report and Recommendation. It is:

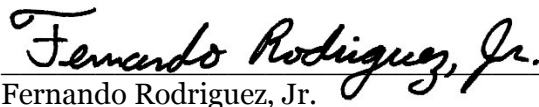
ORDERED that the Bank's Motion for Summary Judgment (Doc. 16) is **GRANTED**;

ORDERED that Plaintiffs' claims for promissory estoppel, breach of contract and fraud are **DISMISSED** with prejudice;

ORDERED that Plaintiffs' claim for a declaratory judgment is **DISMISSED** without prejudice for lack of jurisdiction; and

ORDERED that Plaintiffs' Motion to Obtain Release of Deed of Trust Lien on Real Property at Fair Market Value (Doc. 28) is **DENIED**.

SIGNED this 22nd day of October, 2019.



Fernando Rodriguez, Jr.
United States District Judge